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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 RAHUL MEWAWALLA, an individual,
13 Plaintiff,
14 vs.
15 STANLEY C. MIDDLEMAN, et al.,
16 Defendant.

CASE NO. 3:21-cv-09700-EMC

**PLAINTIFF'S MOTION FOR AWARD OF
ATTORNEYS' FEES AND BILL OF
COSTS PURSUANT TO FED. R. CIV. P.
54(D) AND CAL. LABOR CODE § 218.5**

**[Filed Concurrently with Declarations of
Oliver Rocos and Patrick Kitchin and
(Proposed) Order]**

Date: May 22, 2025
Time: 1:30 p.m.
Crtrm: 5

Assigned to Hon. Edward M. Chen

Trial Date: February 5, 2025

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 **PLEASE TAKE NOTICE** that on May 22, 2025, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard before the Honorable Edward M. Chen, in Courtroom 5, 17th Floor of the
4 above-captioned Court, located at 450 Golden Gate Avenue, San Francisco, California 94102,
5 Plaintiff Rahul Mewawalla (“Plaintiff”) will and hereby does move for an award of attorneys’ fees
6 against Defendant Freedom Mortgage Corporation (“FMC”).

7 Specifically, Plaintiff hereby requests that the Final Judgment include the attorneys' fees and
8 costs requested herein pursuant to Federal Rule of Civil Procedure 54(d) and California Labor Code
9 section 218.5(a), which provides that the Court "shall award reasonable attorney's fees and costs to
10 the prevailing party" in "any action brought for the nonpayment of wages [or] fringe benefits[.]"
11 Plaintiff was the prevailing party in this litigation, and specifically prevailed on his claim for breach
12 of contract against FMC. The requested fees were reasonably incurred in connection with that cause
13 of action and/or resolving factual and legal issues common to that cause of action and other claims
14 for the reasons set forth herein.

15 This Motion is based on this Notice of Motion and Motion, the supporting Memorandum of
16 Points and Authorities, the concurrently filed Declaration of Oliver Rocos, the pleadings and papers
17 on file, such further evidence and oral argument as may be presented at the time of the hearing, and
18 such other matters of which the Court may take notice.

20 | DATED: March 11, 2025

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By: /s/ Oliver Rocos
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Rahul Mewawalla

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 At the conclusion of trial, the jury agreed that Plaintiff Rahul Mewawalla (“Plaintiff” or “Mr.
4 Mewawalla”) had been wrongfully terminated by Defendant Freedom Mortgage Corporation
5 (“FMC”) without “Cause” and awarded him \$4,293,813 in unpaid severance wages and benefits.
6 Under California law—which governed the Employment Agreement and governs this Motion—
7 these damages for “the nonpayment of wages [and/or] fringe benefits” makes it mandatory to award
8 Plaintiff his attorneys’ fees. Labor Code § 218.5(a); *Ramos v. Garcia*, 248 Cal. App. 4th 778, 786
9 (2016) (“[T]he term “any action” refers to any cause of action, and attorney fees may be awarded
10 and apportioned on one eligible claim under section 218.5[.]”). Plaintiff should be awarded the
11 attorneys’ fees he seeks.

12 Throughout the duration of this three and a half year case, Plaintiff's attorneys—an
13 experienced solo practitioner and a trial litigation boutique—litigated against more than a dozen
14 attorneys from three different national law firms to great success. The ferocity of the Defendants'
15 resistance through its many attorneys was substantial and resulted in this case expanding
16 significantly to include hundreds of discovery requests, hundreds of thousands of pages of
17 discovery, two dozen depositions, discovery from half a dozen third parties, six experts, dozens of
18 motions, and 21 trial witnesses in five days. This case was substantially more complex than the
19 average employment dispute—and its value ran into the millions of dollars—and Plaintiff's
20 counsel's rates and hours spent were reasonable in the circumstances.

21 Further, while Plaintiff brought claims in addition to his breach of contract claims, California
22 law is clear that “fees need not be apportioned when incurred for representation of an issue common
23 to both a cause of action for which fees are permitted and one for which they are not.” *Akins v.*
24 *Enter. Rent-A-Car Co. of San Francisco*, 79 Cal. App. 4th 1127, 1133 (2000) (“**All expenses**
25 **incurred on the common issues qualify for an award**,” emphasis added). The breach of contract
26 claim permeated every aspect of this action from start to finish, and the case would have looked
27 substantially identical had that been the sole claim brought. Accordingly, Mr. Mewawalla is
28 presumptively entitled to all of the fees he incurred even where that work was *also* relevant to

1 another claim. Any reductions to account for the existence of those other claims should be minor
 2 and confined to work performed on issues and matter unique to those claims.

3 In total, Plaintiff incurred \$3,900,050 in attorneys' fees and \$11,865.91 in nontaxable costs¹
 4 in successfully pursuing his breach of contract claim for unpaid severance wages and he respectfully
 5 requests the Court include an award of those amounts in the Final Judgment pursuant to Labor
 6 Code 218.5(a). Additionally, as the "prevailing party" in this litigation, Plaintiff is entitled to and
 7 seeks \$249,369.89 in taxable costs.²

8 **II. BACKGROUND**

9 Plaintiff filed this action on September 3, 2021, and Defendants removed it to this Court on
 10 December 16, 2021 based on diversity. *See* ECF No. 1. Plaintiff sought in his Complaint three
 11 categories of damages: (1) unpaid wages and benefits he was due under his Employment Agreement
 12 with FMC, including the value of equity he would have earned had he not been terminated; (2) the
 13 value of the lost opportunity damages arising from Defendants' fraudulent promises and
 14 concealment; and (3) statutory penalties. *See generally* ECF No. 1-1 ("Compl."). In particular,
 15 Plaintiff's fifth cause of action, for breach of contract against FMC, sought unpaid wages and
 16 benefits under Plaintiff's Employment Agreement, including the severance benefits set forth in
 17 sections 8 of the Employment Agreement and the value of his lost equity. *Id.* ¶¶ 120–295. Plaintiff's
 18 Prayer for Relief expressly sought the "costs of suit incurred herein, including reasonable attorney's
 19 fees and costs." *Id.* at p. 92.

20 Defendants asserted myriad affirmative defenses to all claims, including fraud, unclean
 21 hands, and "after-acquired evidence," and brought counterclaims alleging: (1) breach of written
 22 contract; (2) breach of fiduciary duty; and (3) declaratory relief. ECF No. 20 (Answer and
 23 Counterclaims) at p. 35-41 and Counterclaims ¶¶ 32–51. In each of those counterclaims, Defendants
 24 sought a ruling that Plaintiff had breached his obligations and that he *was* properly terminated for

25
 26 ¹ Specifically, Plaintiff requests \$619,182 for attorneys' fees for Kitchin Legal, APC and at least
 \$3,280,868 in attorneys' fees and \$11,865.91 in nontaxable costs for Bird Marella LLP.

27 ² Specifically, Plaintiff requests \$19,257.16 in taxable costs for Kitchin Legal, APC, and
 \$230,112.73 in taxable costs for Bird Marella LLP.

1 “Cause,” *i.e.*, the inverse of Plaintiff’s breach-of-contract claim, and sought an order compelling
 2 Plaintiff to repay a portion of his signing bonus, *i.e.*, repayment of wages.

3 On May 2, 2022, the Court dismissed seven of Plaintiff’s original 19 causes of action in their
 4 entirety (namely, counts 3, 4, 10, 11, 12, 17, and 19), leaving 12 remaining causes of action. *See*
 5 ECF No. 19 (ruling on Defendants’ Motion to Dismiss).

6 On July 15, 2022, the Court dismissed Defendants’ cross-claim for breach of fiduciary duty,
 7 leaving 2 remaining cross-claims. *See* ECF No. 37 (ruling on Plaintiff’s Motion to Dismiss).

8 On September 20, 2023, the Court dismissed Defendants’ cross-claim for declaratory relief
 9 and eight of Plaintiff’s causes of action in their entirety (namely, counts 7, 8, 9, 13, 14, 15, 16, and
 10 18), leaving four remaining causes of action for Plaintiff, one remaining cross-claim, and a series of
 11 affirmative defenses. *See* ECF No. 160 (ruling on Cross-Motions for Summary Judgment). In
 12 connection with that ruling, the Court also held that Plaintiff was not entitled to the value of his lost
 13 equity and for expenses incurred in connection with his move from California to Washington. *Id.*

14 On February 5, 2025, Defendants dismissed their remaining cross-claim and the matter
 15 proceeded to trial on Plaintiff’s four remaining causes of action—namely, False Promise and
 16 Fraudulent Concealment against FMC and Stanley Middleman (counts one and two, respectively),
 17 Breach of Contract against FMC and Xpanse (count five), and Breach of the Implied Covenant of
 18 Good Faith and Fair Dealing against Xpanse (count six). *See* ECF Nos. 302–307 (Minutes).

19 On February 12, 2025, the jury returned a verdict in favor of Plaintiff on his claims for False
 20 Promise and Fraudulent Concealment and for Breach of Contract against FMC, and in favor of
 21 Xpanse on Plaintiff’s claims for Breach of Contract and the Implied Covenant of Good Faith and
 22 Fair Dealing. *See* ECF No. 310 (Jury Verdict).

23 **III. PLAINTIFF IS ENTITLED TO ALL FEES INCURRED IN PURSUING HIS**
 24 **BREACH OF CONTRACT CLAIM**

25 **A. A Fee Award Is “Mandatory” Because Plaintiff Prevailed On His Breach-of-**
 26 **Contract Claim For Unpaid Wages**

27 “A federal court sitting in diversity applies the law of the forum state regarding an award of
 28 attorneys’ fees.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000). “Because

1 California law governs Plaintiff's claims, it also governs the award of fees." *Lopez v. Velocity*
 2 *Transp. LLC*, No. 22-CV-1414-RSH-KSC, 2024 WL 4957565, at *11 (S.D. Cal. Dec. 3, 2024).

3 Under California law, "[i]n **any** action brought for the nonpayment of wages [and/or] fringe
 4 benefits" the Court "**shall** award reasonable attorney's fees and costs to the prevailing party if any
 5 party to the action requests attorney's fees and costs upon the initiation of the action." Cal. Labor
 6 Code § 218.5 (emphasis added). In other words, "[t]he awarding of attorney's fees is '**mandatory**'
 7 in unpaid wage claims." *Drumm v. Morningstar, Inc.*, 695 F. Supp. 2d 1014, 1018 (N.D. Cal. 2010)
 8 (emphasis added) (quoting *Earley v. Superior Court*, 79 Cal.App.4th 1420, 1427 (2000)).

9 It is well-settled that "wages" include not just hourly wages, but all remuneration for
 10 employment, including severance payments and awards of restricted stock units issued in lieu of
 11 annual compensation. Labor Code § 200 ("Wages' includes all amounts for labor performed by
 12 employees of every description[.]"); *Battista v. F.D.I.C.*, 195 F.3d 1113, 1120 n.8 (9th Cir. 1999)
 13 ("California law treats severance pay as wages."); *Rhea v. Gen. Atomics*, 227 Cal. App. 4th 1560,
 14 1570 (2014) ("Our Supreme Court has stated that vacation pay is a type of wages[.]"); *Schachter v.*
 15 *Citigroup, Inc.*, 47 Cal. 4th 610, 619 (2009) ("The Court of Appeal concluded, and we agree, that
 16 the shares of restricted stock issued to Schachter also constituted a wage.").

17 It is equally well-settled that "action[s] brought for the nonpayment of wages" include
 18 breach-of-contract claims, such as the one at issue here—not just claims arising under the Labor
 19 Code.³ *See Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 818, 820 (9th Cir. 2009) (noting
 20 with approval trial court's award of fees pursuant to Labor Code § 218.5 in action for breach of
 21 contract for nonpayment of severance benefits); *Clark v. United Emergency Animal Clinic, Inc.*, 123
 22 F. App'x 736, 738 (9th Cir. 2004) ("Attorney's fees should not be denied on claims for unpaid wages
 23 simply because they were not paid in breach of contract."); *On-Line Power, Inc. v. Mazur*, 149 Cal.
 24 App. 4th 1079, 1086 (2007) (holding it would be error to conclude that § 218.5 did *not* apply to
 25 breach-of-contract claim).

26

27

³ Defendants have not disputed that Plaintiff is entitled to certain attorney fees—only their
 28 amount. *See, e.g.*, ECF No. 311 (Tr. I) at 5:12–24 (discussing entitlement to attorney's fees).

1 Finally, “[w]here there are multiple claims alleged in the complaint, a party need not prevail
 2 on all of the claims in order to qualify as a ‘prevailing party’ under section 218.5[.]” *Ramos*, 248
 3 Cal. App. at 786 (citing *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556, 563 (2012)).

4 **B. Plaintiff’s Breach Of Contract Claim Was The Central Claim At Issue And It
 5 Permeated All Aspects Of, And Evidence In, The Action**

6 Plaintiff’s breach of contract claim was the central and defining claim in this action. Among
 7 others, the factual and legal issues that directly concerned that claim included all of the issues that
 8 were in dispute from the pleadings through to closing arguments: (1) the Parties’ pre-contractual
 9 discussions and representations as to the nature of their relationship; (2) the Parties’ communications
 10 reducing the pre-contractual negotiations to writing; (3) the interpretation of the Employment
 11 Agreement; (4) the Parties’ performance of their respective obligations, including complaints by
 12 and (allegedly) against Plaintiff and others; (5) Plaintiff’s challenging of certain proposed and actual
 13 decisions made by Defendants; (6) the circumstances, nature, and reasons for Plaintiff’s termination,
 14 including whether it was or was not “for Cause”; (7) the damages Plaintiff suffered as a consequence
 15 of his wrongful termination; and (8) whether Plaintiff acted fraudulently in connection with the
 16 formation of the contract or had unclean hands, and whether Defendants could justify their
 17 termination with after-acquired evidence. *See generally* ECF No. 315 (Tr. V) at 1087:13–1171:22
 18 (closing arguments). While these issues were certainly relevant to other causes of action too, each
 19 would have been litigated in a substantially identical manner to that which they were litigated here
 20 whether or not those other causes of action had been pursued.

21 Further, all of the testimonial and documentary evidence that was adduced and produced in
 22 this case related to these issues, with only minor potential exceptions. All but one of the 24 fact and
 23 expert depositions concerned Plaintiff’s breach of contract claim.⁴ The testimony of all 21 trial
 24 witnesses was directly relevant to Plaintiff’s breach of contract claim. And all of the many thousands
 25 of documents produced in this case concerned these issues with only three potential, and small,
 26

27

⁴ The sole potential exception is the deposition of Defendants’ expert Matthew Finkin, which
 28 concerned issues of German law.

1 exceptions.⁵ Plaintiff is thus entitled to all of his fees spent litigating each of these issues.

2 Each of Defendants' three Counterclaims also directly related to Plaintiff's non-payment of
 3 wages claim. Specifically, Defendants' causes of action for breach of contract and declaratory relief
 4 each arose directly out of the terms of the Employment Agreement, ECF No. 20 (Answer and
 5 Counterclaims) at Counterclaim ¶¶ 33, 46, and the remaining cross-claim for breach of fiduciary
 6 duty arose from Plaintiff's conduct performing his obligations, *id.* ¶¶ 39–44. Indeed, until the
 7 morning of the first day of trial, Defendants argued that *Plaintiff* should be held liable to *them* and
 8 forced to repay certain wages. Accordingly, just as in *Stonebrae, L.P.*, each of these claims were
 9 "inextricably intertwined with the breach of contract claim" and "sought to alter the damages
 10 recoverable for that conduct." 2011 WL 1334444, at *10. Just as Plaintiff is entitled to fees for the
 11 success of his breach of contract claim, so too is he entitled to fees for his successful defense of
 12 Defendants' counterclaims. *Erickson*, 126 Cal. App. 4th at 1084 (cross-claims); *Liton*, 16 Cal. App.
 13 4th at 588 (co-defendants). This is only logical: it would be unjust to provide that a plaintiff can
 14 recover for fees he won but not for counterclaims that sought to defeat those exact same claims. *See*
 15 *Akins*, 79 Cal. App. 4th at 1133 ("All expenses incurred on the common issues qualify for an award,"
 16 emphasis added).

17 In sum, therefore, Plaintiff is entitled to recover the attorney's fees incurred in this action
 18 because they relate to issues in his breach of contract that sought damages for non-payment of
 19 wages. *Cruz*, 57 Cal. App. 5th at 235–36 (fees awarded pursuant to Labor Code § 218.5 need not be
 20 apportioned in such circumstances).

21 **IV. FEES INCURRED ON MATTERS RELEVANT TO PLAINTIFF'S BREACH OF
 22 CONTRACT CLAIM ARE NOT APPORTIONED AMONG OTHER CLAIMS**

23 **A. Plaintiff's Entitlement To Fees Incurred On His Nonpayment Of Wages Claim
 24 Is Not Diluted By His Other Claims**

25 It is black-letter law that "joinder of causes of action should not dilute the right to attorney
 26

27 ⁵ These potential categories are documents relating solely to (1) Plaintiff's fraud damages;
 28 (2) Plaintiff's moving expenses; and (3) punitive damages.

1 fees.” *Akins*, 79 Cal. App. 4th at 1133. Courts have long viewed this principle expansively to ensure
 2 a successful plaintiff is properly compensated.

3 **First**, “it is clear that *attorney fees need not be apportioned* between claims for which
 4 statutory fees are available and those for which they are not *where the claims involve either*
 5 *common factual issues or legal issues.*” *Cruz v. Fusion Buffet, Inc.*, 57 Cal. App. 5th 221, 235–36
 6 (2020) (emphases added) (considering allocation in the specific context of Labor Code § 218.5). For
 7 example, the California court of appeal affirmed in *Cruz* the trial court’s conclusion that allocation
 8 of fees was not required between meal and rest break claims (for which no fees were recoverable)
 9 and wage claims (for which fees were recoverable pursuant to Labor Code § 218.5) because the
 10 claims “all necessarily required an analysis and consideration of the number of hours that Cruz
 11 worked” and the plaintiff used common evidence to prove all of her claims. 57 Cal. App. 5th at 235–
 12 36. The court of appeal distinguished this scenario from another case where allocation was required
 13 between claims against a defendant *roofing* contractor and claims against other defendants for
 14 wholly unrelated *soil* issues, due to the “well-defined lines of demarcation” between them. *Id.*

15 Likewise, this Court awarded attorney’s fees incurred in successfully litigating a breach of
 16 contract claim even though that same work applied to an *unsuccessful* “declaratory relief claim
 17 seeking to invalidate [a] liquidated damages claim.” The basis for that ruling was that work for that
 18 unsuccessful claim was “inextricably intertwined with the breach of contract claim. Rather than
 19 constituting a separate substantive cause of action and focusing on a ‘distinct and separate’ course
 20 of conduct, the declaratory relief claim sought to alter the damages recoverable for that conduct.”
 21 *Stonebrae, L.P. v. Toll Bros.*, No. C-08-0221-EMC, 2011 WL 1334444, at *10 (N.D. Cal. Apr. 7,
 22 2011), *aff’d*, 521 F. App’x 592 (9th Cir. 2013) (“Claims that arise from the same course of conduct
 23 are related.”).

24 **Second**, “[a]ll expenses incurred on the common issues qualify for an award.” *Akins*, 79 Cal.
 25 App. 4th at 1133 (emphasis added). This rule entitles a successful plaintiff to fees incurred in
 26 litigating *unsuccessful theories* of the successful claim. In *Akins*, for example, the court awarded
 27 the plaintiff the fees sought on its successful claim notwithstanding that “the bulk of [the] attorney
 28 time was spent on claims for which attorney fees are not properly awarded by statute—[including]

1 the portion of the statutory claim on which [defendant] prevailed in its motion for nonsuit.” *Id.* at
 2 1132–33 (affirming award of unallocated fees in such circumstances). That is because “litigation
 3 may involve a series of attacks on an opponent’s case. The final ground of resolution may become
 4 clear only after a series of unsuccessful attacks. Compensation is ordinarily warranted even for those
 5 unsuccessful attacks, to the extent that those attacks led to a successful claim.” *Id.*

6 This rule also applies when the common issues involve multiple defendants where, as here,
 7 their liability is “so factually interrelated that it would have been impossible to separate the activities
 8 involved in” litigating the claims against each. *Liton Gen. Eng’g Contractor, Inc. v. United Pac.
 9 Ins.*, 16 Cal. App. 4th 577, 588 (1993). Finally, the rule applies even where the common issues are
 10 spread across claims and counter-claims. *Erickson v. R.E.M. Concepts, Inc.*, 126 Cal. App. 4th 1073,
 11 1084 (2005) (holding that “bifurcation of trial did not effect a separation of [the] complaint from the
 12 assigned cross-complaints so as to eliminate the court’s discretion to award [the cross-complainant]
 13 attorney fees incurred in the trial’s first phase”).

14 **Third**, “[t]o the extent [Defendant] argues some portion of [Plaintiff’s] reasonable attorney
 15 fees were incurred solely” in connection with other claims, “it will be [Defendant’s] burden to show
 16 the [Plaintiff’s] *prima facie* claimed amount of . . . total reasonable fees should be reduced
 17 accordingly.” *People v. Millard*, 175 Cal. App. 4th 7, 33 (2009) (citing *People v. Fulton*, 109 Cal.
 18 App. 4th 876, 884, 886–87 (2003) in the context of restitution fee award); *In re Bartenwerfer*, No.
 19 20-60020, 2021 WL 3560671, at *1 (9th Cir. Aug. 12, 2021) (same in context of bankruptcy court).

20 **B. The Issues In Plaintiff’s Non-Breach Of Contract Claims Overlapped With
 21 Those In His Breach Of Contract Claims**

22 The essence of all of Plaintiff’s causes of action in this dispute is that Defendants failed to
 23 comply with their obligations. Accordingly, this is not a case with “well-defined lines of
 24 demarcation” between each of Plaintiff’s claims. *Cruz*, 57 Cal. App. 5th at 236. On the contrary, all
 25 of the work undertaken in the course of drafting pleadings, proceeding through fact and expert
 26 discovery, preparing the case for trial (including litigation of pre-trial motions), and putting on the
 27 case at trial for all claims concerned issues that related to the breach of contract claim.

28 Even if the issues are viewed with a malevolent eye, there are at most just a handful of

1 matters that were unique to the non-breach of contract claims such that they are even arguably not-
2 recoverable. As set forth below and in further detail in the concurrently filed Declarations of Oliver
3 Rocos (“Rocos Decl.”) and Patrick Kitchin (“Kitchin Decl.”), Plaintiff has carved out those fees
4 from this Motion and so the full fees sought herein should be awarded.

1. Plaintiff's False Promise and Concealment Claims Claim Were Inextricably Intertwined With His Breach Of Contract Claim

7 Plaintiff's fraud claims arose out of the *exact same course of conduct* as his breach of
8 contract claim. Specifically, both claims turned on (1) the representations made to Plaintiff; (2)
9 Defendants' breaches of those representations, which were proven by the evidence of the Parties
10 performance (or otherwise) of their obligations; and (3) how Defendants responded when Mr.
11 Mewawalla asserted that those obligations were not being honored. *E.g.*, ECF No. 315 (Tr. V) at
12 1096:17–1097:15 (closing argument that “Stan Middleman and Freedom had no intention of
13 honoring the promises that had been made to Rahul,” entered into a “plot to terminate him,” and
14 ultimately “fired [him] for having a good faith disagreement” about “the LLC conversion, the equity
15 buyback, and the double valuations”). Indeed, the evidence proving the fraud was directly relevant
16 to whether there was a breach of contract. The Parties fiercely disputed whether Defendants had
17 “Cause” to terminate Plaintiff, and the evidence and arguments as to Defendants’ disposition
18 towards Plaintiff, including their willingness to make false promises and general indifference to his
19 concerns despite having done so, was an intrinsic part of proving both fraud and absence of “Cause.”
20 The Parties’ dealings and course of conduct taken as a whole supported *both* the fraud and breach
21 of contract claims. The work on those claims was therefore “inextricably intertwined,” and Plaintiff
22 is entitled to attorneys’ fees for all of it. *See Stonebrae, L.P.*, 2011 WL 1334444, at *10.

23 Notwithstanding the foregoing, there are two issues relating to Plaintiff's fraud claims that
24 at least were arguably "distinct and separate"—evidence of fraud damages and punitive damages.
25 As to fraud damages for "lost opportunity," Plaintiff testified that there were other employment
26 opportunities he could have pursued had he not worked for Defendants and supported that testimony
27 with evidence of an opportunity he had been offered by third party Engel & Volkers. *See* ECF No.
28 299 (Revised Final Jury Instructions) at 34 (Instruction No. 29). Defendants sought to defend against

1 this contention in part through the expert testimony of Professor Matthew Finkin. *E.g.*, ECF No.
2 219 (Plaintiff's MIL No. 3). Defendants' misrepresentations that deprived Plaintiff of that
3 opportunity unquestionably formed a part of Plaintiff's breach of contract claim because it
4 demonstrated Defendants' indifference towards him and therefore their likelihood to have
5 terminated him without Cause. Nevertheless, Plaintiff is willing to forego the attorneys' fees
6 incurred in addressing this issues and has excluded time entries referring to them from this Motion.⁶

7 As to punitive damages, Plaintiff sought and obtained in discovery evidence of Defendants' wealth. Such evidence was, again, directly relevant to Plaintiff's breach of contract claim because it again showed Defendants were insulated from the consequences of their actions and were indifferent to the circumstances of others such that they were likely to have terminated him without "Cause." Nevertheless, Plaintiff is again willing to forego the attorneys' fees incurred in connection with the gathering and presentation of evidence on that issue because those damages were available only with respect to his fraud claim.⁷ See ECF No. 299 at 46–48 (Instruction No. 41); ECF No. 310 (Verdict Form).

17 With respect to Plaintiff's unsuccessful statutory claims (Causes of Action 7–9 and 13–16),
18 those claims also almost entirely overlapped with the successful breach of contract claim such that
19 Plaintiff should be entitled to recover his fees spent pursuing them.⁸

6 Fees that Plaintiff foregoes in connection with that issue include those incurred (1) collecting
21 and producing documents relating to the Engel & Volkers opportunity; (2) deposing Professor
22 Finkin; (3) bringing Plaintiff's Motion in Limine No. 3 to exclude Mr. Finkin's testimony;
23 (4) opposing Defendants' Motion in Limine No. 1 to exclude certain evidence relating to the Engel
& Volkers opportunity; and (5) a portion of the cost of preparing Mr. Persechini's damages report
and examining him at trial. Rocos Decl. ¶¶ 13–16, 19.

⁷ Fees that Plaintiff foregoes in connection with that issue include those incurred in (1) preparing letter briefing to compel the production of punitive damages discovery; and (2) opposing Defendants' motion to bifurcate the trial. Rocos Decl. ¶¶ 13–16, 24.

²⁷ 8 “Compensation is ordinarily warranted even for those unsuccessful attacks, to the extent that
28 those attacks led to a successful claim.” *Akins*, 79 Cal. App. 4th at 1132–33 (“The final ground of
resolution may become clear only after a series of unsuccessful attacks.”).

1 In particular, and with only one exception identified below, each of those claims was
 2 predicated on (1) the formation of an employment relationship; and (2) the termination of that
 3 relationship in a wrongful manner. In particular, Plaintiff's Seventh, Eighth, and Ninth Causes of
 4 Action each asserted that he was wrongfully terminated in retaliation for his having challenged
 5 decisions made by Defendants. ECF No. 1 (Compl.) ¶¶ 188-216. That contention and the evidence
 6 relating to it overlaps entirely with Plaintiff's breach of contract claim. Similarly, Plaintiff's
 7 Thirteenth, Fifteenth, and Sixteenth Causes of Action each asserted that he was not paid wages that
 8 he was owed at termination. *Id.* ¶¶ 240-257, 270-295. Again, that contention overlaps entirely with
 9 Plaintiff's breach of contract claim. Accordingly, the dismissal of those claims should not result in
 10 any reduction to the attorneys' fees Plaintiff seeks.

11 The only meaningful distinction between these statutory claims and Plaintiff's successful
 12 breach of contract claim is the legal consequences of the violation, *i.e.*, what statutory damages
 13 Plaintiff would have been entitled to had he proven his claims. Because these claims were dismissed
 14 on jurisdictional grounds, these issues were not litigated. However, Plaintiff's attorneys did
 15 complete some small amount of work with Plaintiff's damages expert to calculate those damages
 16 before these claims were dismissed. To the extent time entries indicated that work was performed
 17 *exclusively* in connection with a damages theory unique to an unsuccessful statutory claim—such
 18 as Plaintiff's efforts to recover double the value of all damages pursuant to Labor Code §§ 972,
 19 974—those fees are not being sought and have been removed.

20 The only statutory claim that did not overlap entirely with Plaintiff's breach-of-contract
 21 claim is his Fourteenth Cause of Action for Violation of Labor Code §§ 970, *et seq.*, because it
 22 concerned whether Defendants had wrongfully induced Plaintiff to move out of California. Compl.
 23 ¶¶ 258-269. Evidence unique to that claim comprised, however, only a handful of receipts and
 24 invoices (Trial Exhibits 254-257, 355-356), and the parties litigated this issue only briefly in
 25 connection with Defendants' Motion for Summary Judgment and the pretrial conference. As with
 26 other deductions, Plaintiff does not concede that such evidence and work was irrelevant to his breach
 27 of contract claim but is willing to forego it.

28 Finally, following the dismissal of Plaintiff's statutory claims on the basis he should have

1 asserted claims under Washington law, Plaintiff moved to amend his pleading to include
 2 Washington law claims. That motion was subsequently denied, and the Parties entered into a tolling
 3 agreement regarding those claims that remains active. Plaintiff does not seek any of the fees incurred
 4 in connection with that motion to amend or the tolling agreement. Rocos Decl. ¶¶ 14–15.

5 **V. THE REQUESTED FEES ARE REASONABLE**

6 Attorneys' fees must be calculated using the "lodestar" method, taking into account "the
 7 number of hours reasonably expended multiplied by the reasonable hourly rate." *Ketchum v. Moses*,
 8 24 Cal. 4th 1122, 1134 (2001). The reasonableness of attorneys' fees is within the discretion of the
 9 trial court, to be determined from a consideration of such factors as the nature of the litigation, the
 10 complexity of the issues, the skill required to litigate them, the experience and expertise of counsel
 11 in the particular type of work demanded, the amount of time involved, and the success of the
 12 attorney's efforts. *Hadley v. Krepel*, 167 Cal. App. 3d 677, 682 (1985). The amount of attorneys'
 13 fees and costs requested in an action are presumed to have been "reasonably and necessarily
 14 incurred" and "conclusory and unsubstantiated objections" are inadequate to rebut this presumption.
 15 *Id.* at 682–83; *see also Carson v. Billings Police Dep't*, 470 F.3d 889, 892 (9th Cir. 2006) ("That a
 16 lawyer charges a particular hourly rate, and gets it, is evidence bearing on what the market rate is,
 17 because the lawyer and his clients are part of the market."). Additionally, "the district court may
 18 enhance the lodestar figure when plaintiff's counsel's 'superior performance and commitment of
 19 resources' is 'rare' and 'exceptional' as compared to the run-of-the-mill representation in such
 20 cases." *Kelly v. Wrangler*, 822 F.3d 1085, 1103 (9th Cir. 2016).

21 **A. The Requested Rates Are Reasonable**

22 "The reasonable hourly rate is that prevailing in the community for similar work." *PLCM*
 23 *Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). "[T]he relevant community is the forum in
 24 which the district court sits." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).
 25 "Affidavits . . . regarding prevailing fees in the community, and rate determinations in other cases
 26 . . . are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps*
 27 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

28 Fee awards granted by this Court over the past several years and expert affidavits submitted

1 in connection with such awards prove that rates of at least \$1,260 for partners and \$800 for associates
 2 are within the reasonable range of this market. *E.g., Moonbug Ent. Ltd. v. Babybus (Fujian) Network*
 3 *Tech. Co.*, No. 21-CV-06536-EMC, 2022 WL 1289048, at *2 (N.D. Cal. Apr. 29, 2022) (citing case
 4 “awarding fees at hourly rates as high as \$1,260 for work performed by attorneys at Quinn Emanuel
 5 Urquhart & Sullivan, LLP”); *Good Job Games Bilism Yazilik v. Pazarlama A.S.*, No. 19-CV-07916-
 6 EMC, 2023 WL 3260528, at *9 (N.D. Cal. May 4, 2023) (citing case “approving Orrick’s hourly
 7 rates of up to \$1,200 for a partner and \$800 for an associate); *CNC Software, LLC v. Glob. Eng’g*
 8 *Ltd. Liab. Co.*, No. 22-CV-02488-EMC, 2023 WL 3409463, at *9 (N.D. Cal. May 12, 2023) (citing
 9 case approving rates of \$530 for a second-year associate, \$725 for a senior associate, \$780 for a
 10 counsel, and \$1,165 for a partner as “within the reasonable range of the local market”); Rocos Decl.
 11 ¶ 30, Ex. A (third-party expert affidavit submitted in other litigation before the Court attaching
 12 compilations of market data as of May 31, 2023 showing awards of rates well into four figures);
 13 Kitchin Decl. ¶ 24 (Laffey Matrix identifies an hourly rate of \$1,141 for attorneys with 20+ years
 14 of litigation experience and \$381 for first-year associates).⁹

15 Given that Defendants are highly sophisticated entities and individuals with access to the
 16 counsel of their choice, the clearest evidence of the going rate in the community for legal services
 17 in connection with a matter like this one is the amounts charged by Defendants’ attorneys, Williams
 18 & Connolly LLP and Duane Morris LLP. Court filings by both firms demonstrate that their rates
 19 are comparable or higher than Plaintiff’s counsel. For example, a January 2025 filing by Defendants’
 20 California counsel, Duane Morris, in a San Francisco Superior Court action stated that the partners
 21 assigned to that matter billed at rates ranging from \$990 to \$1,045 per hour and its associates billed
 22 at amounts ranging from \$484.50 to \$715 per hour. *See* Rocos Decl. ¶ 31, Ex. B. Likewise, a court
 23 filing from *more than a decade ago* by Defendants’ lead counsel, Williams & Connolly,
 24 demonstrates that at least one of its partners was charging \$850 per hour *in 2013*. *See* Rocos Decl.
 25

26 ⁹ Although this matter should be judged by the standards of complex litigation more generally,
 27 the Court has found comparable rates reasonable in the specific context of employment law. *Metaxas*
 28 *v. Gateway Bank F.S.B.*, No. 20-CV-01184-EMC, 2022 WL 16949939, at *4 (N.D. Cal. Nov. 15,
 2022) (finding \$800 to be a reasonable attorney rate).

1 ¶ 32, Ex. C (attesting to a rate of \$765 after a 10% discount). Assuming a modest 5 percent annual
 2 rate increase from \$850 since 2013, that W&C partner's 2025 rate would be **\$1,525 per hour**.

3 Kitchin Legal was a one-attorney firm during its representation of Plaintiff, with the
 4 exception of a four-month period during which Patrick Kitchin was assisted by a part-time associate.
 5 Kitchin Decl. ¶ 19. Kitchin, a University of Michigan Law School alum with over three decades of
 6 legal experience in wage-and-hour law in California, charged an hourly rate of \$850. *Id.* ¶¶ 3–4, 21.
 7 Mr. Kitchin's part-time associate charged an hourly rate of \$350. *Id.* ¶ 23.

8 Bird Marella assumed representation of Plaintiff towards the end of fact discovery. Senior
 9 partner Ekwan Rhow provided strategic oversight and served as lead trial counsel while partner
 10 Oliver Rocos and of counsel Kate Shin managed the case and handled the bulk of the drafting and
 11 day-to-day work together with the firm's associates. *See* Rocos Decl. ¶ 2. The attorneys working on
 12 this matter are highly educated and experienced in commercial litigation. *Id.* ¶¶ 4–10. Rhow, a
 13 graduate of Harvard Law School who has been a licensed attorney for over 30 years, billed at an
 14 hourly rate of \$1190–\$1500. *Id.* ¶ 4. Rocos, who earned an LLB from Cardiff University and an
 15 LLM from Boston University who has been a licensed attorney in England and Wales since 2008
 16 and in the United States since 2013, billed at an hourly rate of \$875–\$905. *Id.* ¶ 5. Shin, who earned
 17 her JD from Pepperdine and began to practice in California in 2011, billed at an hourly rate of \$790
 18 on this matter. *Id.* ¶ 6. The associates working on the case, who went to law school at UCLA,
 19 Georgetown, and Stanford and have each practiced law for at least six years at the time of their work
 20 on this matter, billed at an hourly rate ranging from \$720–\$820. *Id.* ¶¶ 7–10. The paralegals working
 21 on this matter billed at an hourly rate of \$415 and professional litigation support staff billed at hourly
 22 rates from \$150–\$460.¹⁰ *Id.* ¶ 11.

23 While the rates these attorneys billed align with those charged in the market, *see supra*,
 24 perhaps the most compelling reason for awarding the rates sought is that Plaintiff's counsel were
 25

26 ¹⁰ Only Defendants and their counsel are in a position to submit an affidavit demonstrating these
 27 rates. If Defendants challenge Plaintiff's rates as unreasonably high for this matter, Plaintiff would
 28 expect to see an affidavit in support of their Opposition setting forth what rates they charged. *See*
Carson, 470 F.3d at 892 (“That a lawyer charges a particular hourly rate, and gets it, is evidence
 bearing on what the market rate is, because the lawyer and his clients are part of the market.”).

1 extremely successful against a far greater number of very experienced and more expensive attorneys
 2 representing Defendants. During pre-trial and trial, for example, Bird Marella's *three* attorneys
 3 (Ekwan Rhow, Oliver Rocos, and Brandon Teachout) successfully litigated against at least *nine*
 4 attorneys from Williams & Connolly and Duane Morris. Rocos Decl. ¶ 25.¹¹ Had Bird Marella
 5 charged lower rates but tripled the number of attorneys on this matter, the total fees sought would
 6 unquestionably have been far higher. In the circumstances, Plaintiff's counsel were more than worth
 7 their hourly rates. *See* Kitchen Decl. ¶¶ 21–24; Rocos Decl. ¶¶ 29–32.

8 **B. The Requested Hours Are Reasonable**

9 "By and large, the court should defer to the winning lawyer's professional judgment as to
 10 how much time he was required to spend on the case; after all, he won[.]" *Moreno v. City of*
 11 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008); *Greenpeace, Inc. v. Stewart*, No. 17-35945, 2020
 12 WL 2465321, at *9 (9th Cir. May 12, 2020) (similar). The goal is "to do rough justice, not to achieve
 13 auditing perfection." *Perez v. Safety-Kleen Sys., Inc.*, 448 F. App'x 707, 709 n.1 (9th Cir. 2011)
 14 ("[T]rial courts need not, and indeed should not, become green-eye-shade accountants."). Given the
 15 complexity and scale of the case, the hours spent on this matter were entirely reasonable.

16 This action was a mammoth undertaking that necessarily incurred substantial effort and
 17 expense, primarily because the multi-billion dollar defendant company and its billionaire founder
 18 sought to use their substantial resources to bully Plaintiff into submission with the support of an
 19 army of attorneys. During the three and a half years it took for this litigation to proceed to trial,
 20 Defendants engaged *three different national law firms to represent them*—first Blank Rome LLP,
 21 then Williams & Connolly, and then Duane Morris. Defendants had *twelve* attorneys of record and
 22 brought at least as many to trial, backed by a phalanx of additional individuals and support staff in
 23 the gallery to provide further assistance. Rocos Decl. ¶¶ 25, 29 & n.1.

24 With respect to discovery, those attorneys sought to and did make written discovery as
 25 burdensome as possible, both by serving **192 Requests for the Production of Documents** and dozens
 26

27 ¹¹ Defendants' attorneys at trial included at least Paul Gaffney, Ricardo Leyva, Ikenna Ugboaja,
 28 George Borden, and Alexander Song (all of Williams & Connolly) and Robert Nolan, Stephen Sutro,
 David Goldstein, and Gregory Herrold. *Id.*

1 of Interrogatories and Requests for Admission and then by producing many hundreds of thousands
 2 of pages of discovery and subpoenaing multiple third parties. Those attorneys also represented
 3 Defendants through eighteen days of depositions of fact witnesses, most of whom either appeared
 4 at trial or had designations read into the record at trial, and six days of expert witness depositions—
 5 each of whom also provided an expert report and several of which provided amended reports as
 6 well. That work was extremely substantial and necessarily incurred a great deal of fees. Kitchen
 7 Decl. ¶¶ 16–17; Rocos Decl. ¶ 18.

8 With respect to motion practice, Plaintiff had to spend time opposing Defendants' meritless
 9 cross-claims for breach of fiduciary duty (on motion to dismiss) and for declaratory relief (on
 10 summary judgment), both of which (as set forth above) overlapped both factually and legally with
 11 Plaintiff's breach-of-contract claim. Plaintiff also had to pursue its own (successful) discovery
 12 motions, oppose Defendants' unsuccessful motion to stay the case and then to challenge Magistrate
 13 Judge Kim's Report and Recommendation, and spent very substantial amounts of time on
 14 administrative motions to seal due largely to Defendants' extensive confidentiality designations that
 15 they did not want to drop. Kitchin Decl. ¶¶ 14, 19; Rocos Decl. ¶¶ 20–22.

16 In pre-trial proceedings, the parties completed vast amounts of work on exhibits, jury
 17 instructions, verdict forms, a dozen motions *in limine* and additional disputes regarding exhibits,
 18 prepared designations for ten deponents spanning thousands of pages (most of which was apparently
 19 wastefully, given that Defendants then brought the majority of those witnesses to trial after hiding
 20 the ball about their strategic choices *for weeks*), met and conferred regarding thousands of
 21 Defendants' objections, prepared the Joint Pretrial Conference Statement, drafted trial briefs, and
 22 then litigated those issues in the January 7, 2025 hearing before preparing numerous supplemental
 23 submissions thereafter. Rocos Decl. ¶ 24.

24 During the five-day, 20-hour, trial, the parties examined 21 witnesses, the Court admitted
 25 nearly 100 exhibits, and the parties met and conferred about numerous additional objections. Rocos
 26 Decl. ¶ 25; ECF Nos. 301–307.

27 The work in this action was as substantial as it was largely because Defendants chose it to
 28 be so. In total, to address Defendants' tactics of attempting to bury Plaintiff and his counsel and then

1 to win the case at trial, Plaintiff's counsel invested over 5,000 hours. Plaintiff seeks recovery of fees
 2 for 4,695.9 of those hours, which is a reduction of 7.1 percent from the total number of 5,058.1
 3 hours actually incurred (for the reasons set forth above and to eliminate any time entries relating to
 4 the transition of counsel from Kitchin Legal to Bird Marella).¹² Kitchen Decl. ¶¶ 10–12; Rocos
 5 Decl. ¶¶ 12–16, 19, 24, 27.

6 Although this figure is significant, all of this work was reasonably necessary for Plaintiff to
 7 prevail on his claim for unpaid wages and the amount of time spent on each task was reasonable, as
 8 set forth in greater detail in the Rocos Declaration. Indeed, Plaintiff is confident that this figure is
 9 low when compared to that spent by Defendants' attorneys.¹³ Both Kitchin Legal and Bird Marella
 10 had every incentive to work efficiently, avoid duplication of effort, and minimize the attorneys' fees
 11 and costs incurred by Plaintiff—both firms were working for a single individual pursuant to a
 12 contingent compensation agreement with no guarantee of *any* payment. And both Kitchin Legal and
 13 Bird Marella *did* work efficiently—for example, Mr. Kitchin spent just 120.2 hours on motion
 14 practice, including litigation of both parties' cross-motions to dismiss, Kitchen Decl. ¶ 12, and Bird
 15 Marella *actually tried this case* in just **384.9 hours**, Rocos Decl. ¶ 25.

16 This was a complex case with difficult legal issues against deep-pocketed, well-staffed, and
 17 determined opposition that required experienced and high quality trial counsel to win. Plaintiff's
 18 success, alone, demonstrates that his counsel's time was well spent. *Moreno*, 534 F.3d at 1112.

19 VI. PLAINTIFF IS ENTITLED TO COSTS

20 Federal Rule of Civil Procedure 54(d)(1) provides that "costs . . . should be allowed to the
 21 prevailing party." Fed. R. Civ. P. 54(d)(1); *see* 28 U.S.C. § 1920 (providing for taxation of certain
 22

23 ¹² Specifically, and as set out in further detail in attorney affidavits filed in support of this motion,
 24 Kitchin Legal worked 752.7 hours and seeks payment for 724.9 hours. Kitchen Decl. ¶¶ 10–19. Bird
 25 Marella worked 4,305.4 hours and seeks payment for 3,971 hours. Rocos Decl. ¶¶ 12–16, 19, 24,
 26 27. Should the Court request it, and subject to review for issues related to attorney/client privilege
 28 and work product, counsel is able to provide specific time entries upon request.

13 As with counsel's hourly rates, to the extent Defendants contend that any of these figures are
 27 unreasonable, they can and should support that with an affidavit demonstrating their counsel
 28 litigated the same issues more efficiently.

1 costs). “Rule 54(d) creates a presumption in favor of awarding costs to prevailing parties, and it is
 2 incumbent upon the losing party to demonstrate why the costs should not be awarded.” *Stanley v.*
 3 *Univ. of S. Cal.*, 178 F.3d 1069, 1079 (9th Cir. 1999); *Miller v. Carrington Mortg. Servs.*, No. C-
 4 12-2282 EMC, 2013 WL 6055241, at *2 (N.D. Cal. Nov. 14, 2013) (quoting Wright & Miller for
 5 the proposition that “the prevailing party is the party in whose favor judgment was entered, even if
 6 that judgment does not fully vindicate the litigant’s position”).

7 In connection with this litigation, Kitchin Legal has incurred 19,257.16 and Bird Marella
 8 has incurred at least \$230,112.73 in taxable costs, including filing fees, costs of service, deposition
 9 and transcript fees, the costs of creating demonstratives for trial, and others. Kitchin Decl. ¶ 20 &
 10 Ex. 1; Rocos Decl. ¶ 33 & Ex. D. Those costs are correctly stated, were necessarily incurred, and
 11 are allowable by law. *See id.* Accordingly, Plaintiff seeks an order granting those costs as well.

12 **VII. CONCLUSION**

13 “Where, as here, a party achieves an excellent result, the court should refuse to reduce the
 14 lodestar amount.” *Stonebrae, L.P.*, 521 F. App’x 592. For the reasons set forth above, Plaintiff
 15 respectfully requests this Court include in its Final Judgment against FMC an award of \$619,182 in
 16 attorneys’ fees and \$19,257.16 in taxable costs to Kitchin Legal and at least \$3,280,868 in attorneys’
 17 fees, \$11,865.91 in nontaxable costs, and \$230,112.73 in taxable costs for Bird Marella LLP.

18
 19 DATED: March 11, 2025

Ekwan E. Rhow
 Oliver Rocos
 Brandon R. Teachout
 Bird, Marella, Rhow, Lincenberg,
 Drooks & Nessim LLP

20
 21 By: /s/ Oliver Rocos

22
 23 Oliver Rocos
 24 Attorneys for Plaintiff and Counter-Defendant
 25 Rahul Mewawalla